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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,095	09/29/2000	Richard V. Halbert	MCTA002/02US	2168

758 7590 02/28/2003

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

THOMPSON JR, FOREST

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,095

Applicant(s)

HALBERT ET AL.

Examiner

Forest O. Thompson Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

DETAILED ACTION

1. This Action is responsive to pre-amendment A (see Paper #2) filed 09/19/2000. Pre-amendment A deleted claims 1-34 and added new claims 35-80. Claims 35-80 are pending.
2. Claims 35-80 have been examined.

Drawings

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 35-80 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,101,484. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar aspects of the inventions. For example:

(i) Claim 35 of patent application #09/677,095 states:

A system for modifying a price curve in order to approach a seller's sales goal for a featured item in an on-line buying-group sale, comprising:

(a) an e-commerce server data processing system, the e-commerce server data processing system including e-commerce server software executable on the e-commerce server data processing system and configured to define the on-line buying group sale for the featured item;

(b) a storage device coupled to the e-commerce server data processing system and having stored therein a data repository including at least price data for the featured item, quantity data for the featured item and buyer-submitted offer data; and

(c) a merchandising staff data processing system coupled to the storage device, the merchandising staff data processing system including software executable on the merchandising staff data processing system and configured to receive merchandising staff inputs for defining the on-line buying-group sale for the featured item, the software including a market equilibrium manager configured to modify a price curve for the featured item in the on-line buying-group sale by using the price data for the featured item, the quantity data for

the featured item, and the buyer-submitted offer data in the data repository in order to approach the seller's sales goal.

(ii) Claim 1 of U. S. Patent No. 6,101,484 states:

A system for modifying a price curve and approaching market equilibrium in an on-line buying co-op for a product, which comprises:

(a) an e-commerce server data processing system, said e-commerce server data processing system including e-commerce server software executable on said e-commerce server data processing system and configured to define an on-line buying co-op for a product;

(b) a storage device coupled to said e-commerce server data processing system and having stored therein a database including at least price data for the product, quantity data for the product and offer data; and

(c) a merchandising staff client data processing system coupled to said storage device, said merchandising staff client data processing system including client software executable on said merchandising staff client data processing system and configured to receive merchandising staff inputs for defining the on-line buying co-op for the product, said client software including a market equilibrium manager to modify a price curve for the product in the on-line buying co-op by utilizing the price data for the product, the quantity data for the product and the offer data in said database.

The instant claims are not patently distinct over U.S. Patent No. 6,101,484, and, therefore, are rejected. Additionally, the dependent claims (36-47, 49, 51-62, 64, 66-78, and 80) are depending from rejected independent claims and are also rejected.

and 80) are depending from rejected independent claims and are also rejected. The claims would be allowable over prior art if applicant files a Terminal Disclaimer.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art includes:

- Shkedy (U.S. Patent No. 6,260,024) discloses systems and methods that are described for providing a global bilateral buyer -driven system for creating binding contracts by incorporating various methods of communication, commerce and security for the buyers and the sellers. Individual buyers purchase requirements are aggregated into a single collective purchase requirement and sellers are located willing to bid on the collective purchase requirement.
- Pallakoff (U.S. Patent No. 6,269,343) discloses an invention that provides a method and system that allows sellers to communicate conditional offers to potential buyers. The conditions include prices that depend on the aggregate amount of goods or services that buyers collectively agree to purchase by a given time and date. The invention facilitates "demand aggregation", that is, aggregating demand by potential buyers (who may or may not know each other), for products offered by sellers. This invention allows sellers conveniently to offer "Demand-Based Pricing", that is, prices which go down as the volume of units sold in any given offer goes up.
- Walker et al. (U.S. Patent No. 6,418,415) discloses an aggregate conditional purchase offer (CPO) management system for receiving and processing CPOs from

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buyers for one or more goods or services that is disclosed. Received CPOs are processed to determine whether the CPO should be provided to sellers individually and/or collectively as part of an aggregate CPO.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest O. Thompson Jr. whose telephone number is (703) 306-5449. The examiner can normally be reached on 6:30-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (703) 308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


F. Thompson
January 10, 2003


Jeffrey A. Smith
Primary Examiner